IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.47 OF 2005

Bilkish Samsher Page Applicant

Vs.

Prabhakar Bhawanrao Rajopadhye,
since deceased through his heirs
Subhangi Prabhakar Rajopadhye & ors. Respondents

Mr.P.R.Arjunwadkar for applicant.
Mr.Rajiv Patil for resp.nos.2 and 3.

CORAM: B.H.MARLAPALLE,J.
July 18, 2005.

ORAL ORDER:

1. Heard Mr.Arjunwadkar, the learned counsel for the applicant and Mr.Rajiv Patil, the learned counsel for respondent nos.2 and 3.

2. By the impugned order dated 4-1-2005 the learned Jt.Civil Judge Senior Division at Kolhapur was pleased to allow Misc.Application No.134 of 2001 and consequently the ex-parte decree passed in Special Civil Suit No.175 of 1998 on 20-2-2001 came to be set aside and the said suit has been restored to the file. The applicant-defendant was directed to pay cost of Rs.1000/-. The trial Court noted that the suit was fixed on 6-2-2001 for framing of issues and on 15-2-2001 it was fixed for evidence. The

applicant-defendant was not present on 15-2-2001 and so also on 17-2-2001 and 20-2-2001. The suit was, therefore, decided ex-parte on 20-2-2001 and allowed. The learned Advocate for the defendant had stated before the trial Court that when the suit was fixed for recording evidence on 15-2-2001 she could not wait in the Court as she was not well and when she returned to the Court on 20-2-2001 she was informed that the suit was already decided ex-parte. She also stated that on account of her fault the defendant could not remain present. The trial Court, therefore, held that the applicant had made out a sufficient cause for not remaining present on 15-2-2001 and also to set aside the ex-parte decree dated 20-2-2001 passed in Special Civil Suit No.175 of 1998. The reasoning given by the trial Court does not call for any interference.

3. However, certain clarifications are required to be set out so that the litigation, if any, at a later date would be avoided.

4. Hence while dismissing the CRA it is directed that in case the plaintiff succeeds on restoration of the suit, the sale deed already executed and

registered consequent to the ex-parte decree shall be treated to be valid and no fresh sale deed will be required to be executed and registered and in case the plaintiff fails in restoration of the suit it is open for the plaintiff to pray for monetary reliefs which will have to be considered by the trial Court on their own merits. It is also clarified that the rights of the respective parties regarding appeal would remain unaffected. The trial of the suit is expedited.

5. Writ to go forthwith.

(B.H.MARLAPALLE,J.)